

In the High Court of Uttaranchal at Nainital.

Criminal Misc. Application No. 844/2001
(Old No. 8513 of 1989)

Ganga Singh and four others Applicants.

Vs.

State of U.P. and another Opposite Parties.

Hon'ble Irshad Hussain, J.

Heard Sri G.S.Negi learned counsel for the applicants and Sri K.S.Rautela learned A.G.A. and perused the record.

This is a petition under section 482 of the Code of Criminal Procedure (hereinafter called 'Code') whereby the accused-applicants have challenged the propriety of the proceedings in criminal case no. 102/1989 and sought quashing of the proceedings.

The facts relevant for the decision of the petition are that on 15.3.1987 an F.I.R. (Annexure-1) was lodged by Radha Ballabh against 29 persons including the applicants alleging commission of crime punishable under sections 395/147 I.P.C. etc. A case was accordingly registered as case crime no. 19/87 under sections 452, 395, 329, 147, 427, 504, 506 I.P.C. by the concerned circle patwari. The case was investigated according to law and final report was submitted on 16.11.1989 (Annexure-2). Complainant Radha Ballabh filed protest petition (Annexure-3) on 6.5.1989. The then learned Munisf Magistrate, Pauri Garhwal examined the said complainant Radha Ballabh on oath as P.W.1 (Annexure-4) on 6.6.1989 and on that very day passed the order after perusal of the protest petition, affidavit filed in its support and evidence of the complainant recorded by him and thereby summoned the accused-applicants on finding that prima facie case is established against them fixing 6-7-1989 for their appearance (Annexure-5). On 6-7-1989 three accused-applicants put in appearance before the Munsif Magistrate who then directed to issue summons against other two accused and meanwhile passed an order to prepare the copies of the statements of the witness by the copying department (Annexure-6). Both these orders therefore clearly indicate that the learned Magistrate had summoned the accused-applicants on the basis of the additional material in the form of

the affidavit and the statement of the complainant. Such an option could have only been legally available if the learned Magistrate was to decide and proceed with the case as a criminal complaint case under chapter XV of the 'Code' but this had not been done. The learned Magistrate proceeded with the case as a state case on the basis of the evidence collected during the investigation and the procedure so adopted is per-se illegal and without jurisdiction. Consequently the impugned order of summoning dated 6-6-89 can not legally be maintained and the same is liable to be set aside.

In view of above the petition is allowed and the impugned order dated 6.6.89 is set aside. The learned Judicial Magistrate Pauri Garhwal is directed to proceed with the case crime no. 19/87 Patwari Circle Dulinda Patti Kapolsyun-2 according to law. The learned Magistrate shall however be not guided by his earlier order dated 6.6.89 and may take the evidence under section 202 of the 'Code' if necessary to satisfy himself as to whether any prima facie case to proceed against the accused-applicants is established or not as contemplated under chapter XV of the 'Code'.

Dt: 22-03-2004

(Irshad Hussain, J.)

ISB